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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,211	08/24/2001	Daniel Lootz	7040-40	3319

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EXAMINER

THALER, MICHAEL H

ART UNIT PAPER NUMBER

3731

DATE MAILED: 01/21/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/939,211	Applicant(s) LOOTZ ET AL.	
	Examiner Michael Thaler	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, 8-21, 24, 44, 50, 57, 64, 67, 70, 71, 74-78, 81, 82, 85, 86, 89, 90, 93-95 and 99-101 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>12</u> . | 6) <input type="checkbox"/> Other: _____                                    |

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This application contains claims 25 and 26 drawn to an invention nonelected with traverse in Paper No. 10. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claims 5, 6, 8, 11-14, 18-21, 24, 44, 57, 64, 67, 70, 71, 74-78, 81, 82, 85, 86, 89, 90, 93-95 and 99-101 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, there is no antecedent basis for "the first direction". Further, it is unclear what the "first direction" is. Other claims have a similar problem. Also, in claim 5, line 4 and other claims, it is unclear what the "peripheral direction" is. Claim 11 is confusing and is not understood. For example, it is unclear what "individually or in a portion-wise manner" means. As to claim 12, the annular support portions and bar elements have already been defined in claim 1, resulting in a double recitation of the same element. Other claims which have identical language to all of the above mentioned claims are similarly unclear. In claim 24, line 10, there is no antecedent basis for "the first longitudinal direction". Also, the device for producing relative movement of the sheathing device in the

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first direction is defined as being different from the device for producing relative movement of the sheathing device in the second direction. However, it appears from the disclosure that this is not the case.

Claims 1, 5, 6, 8-18, 24, 44, 50, 57, 64, 67, 70, 71, 74-78, 81, 82, 85, 86, 89, 90, 94, 95, 100 and 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duerig et al. (6,190,406) in view of Cox (6,461,380). Duerig et al. disclose a plurality of annular support portions 52 comprising bar elements and connecting bars 70. Duerig et al. fail to disclose the connecting bars 70 engaging a central region of the annular support portion. However, Cox teaches that connecting bars 28 between annular support portions 18 of a stent should be connected to the annular support portions 18 in a central region of the bar element 32 between the turning points (apexes) of the bar element so that it avoids the highly stressed apex area (col. 3, lines 45-50 and col. 2, lines 46-49). It would have been obvious to so connect the Duerig et al. connecting bars 7 so that it too would have this advantage. Note that the Cox connecting bars 28 engage a region of the bar elements that projects in the longitudinal direction, as broadly claimed, since the bar elements project in the longitudinal direction throughout their entire length. Note that the Cox connecting

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points between the connecting bars 28 and the bars of the annular support portions 18 are both near a turning point of the annular support portion as defined in claim 5 (and at the end of the turning point itself such that the connecting point engages the turning point as defined in claim 6, noting that the "turning point" is considered to be the entire curved portion near the apex) and at a central region of the bar element as defined in claims 7 and 8. As to claims 10 and 11, note col. 7, lines 39-60 of Duerig et al. As to claim 16, for example, Duerig et al. fail to disclose the stent material in a stress-induced martensitic state at body temperature. However, it was well known in this art to design make shape memory alloys such that they are in a stress-induced martensitic state at body temperature in order to facilitate entry into the patient's body. It would have been obvious to make the Duerig et al. the stent material in a stress-induced martensitic state at body temperature so that it too would have this advantage. The above well known in the art statement is taken to be admitted prior art because applicant failed to traverse the examiner's assertion (M.P.E.P. 2144.03). As to claim 24, Duerig et al. disclose a device 22 for holding the stent during relative movement between the sheathing device and the stent. As to claim 85, the width of the Duerig et al. bar element varies over

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the length thereof (col. 6, lines 8-39). As to claim 100, the center line of the Duerig et al. bar element is in the shape of an elliptical arc in the region of the turning points when the stent is expanded, as seen in figure 5, for example.

Claims 19-21, 93 and 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duerig et al. (6,190,406) in view of Cox (6,461,380) as applied to claims 18, 78 and 82 above, and further in view of Lau et al. (6,015,429). Duerig et al. fail to disclose a direction of curvature changing in the central region of the bar element. However, Lau et al. teach that the central region of a meandering bar element of a stent may be curved (at 114 in figure 1C) instead of straight (at 106 in figure 1A). This shape has the self-evident advantage of providing more support to the blood vessel along the edges of the meandering bar element. It would have been obvious to incorporate this shape into the Duerig et al. bar element so that it too would have this advantage. Note that the direction of curvature changes at 114 in figure 1C.

Claims 1, 5, 6, 8-21, 24, 44, 50, 57, 64, 67, 70, 71, 74-78, 81, 82, 85, 86, 89, 90, 93-95 and 99-101 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 09/939,057. Although

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the conflicting claims are not identical, they are not patentably distinct from each other because the differences in scope involve only minor, obvious differences.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicant's arguments filed Jan. 12, 2004 have been fully considered but they are not persuasive for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
1/16/04



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731